

5332

RECORDATION NO. _____

CONDITIONAL SALE AGREEMENT

SEP 20 1971 - 2 35 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT, dated as of September 15, 1971, by and between C. B. STERZING and J. A. DEANS (hereinafter sometimes called the "Vendor" or "Owners", as more particularly set forth in Article 28 hereof) and DELAWARE AND HUDSON RAILWAY COMPANY, a corporation organized under the laws of the State of Delaware with an office in Albany, New York (hereinafter sometimes called the "Vendee").

W I T N E S S E T H:

WHEREAS, the Owners, at the request of the Vendee, have acquired the units of railroad equipment described in Schedule A annexed hereto (hereinafter called the "Equipment"); and

WHEREAS, the Owners desire to sell and deliver to the Vendee and the Vendee has agreed to purchase, on the terms and conditions hereinafter set forth, the Equipment from the Owners; and

WHEREAS, the Owners and the Vendee have agreed that this Agreement shall exclusively and completely state the rights of the Owners and the Vendee with respect to sale of the Equipment and shall supersede any and all other agreements, oral or written, with respect to the Equipment upon delivery of the Equipment to the Vendee hereunder;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. ACQUISITION AND SALE. The Owners will sell and deliver to the Vendee, and the Vendee will purchase from the Owners and accept delivery of and pay for, the Equipment as hereinafter provided.

2. DELIVERY. The Owners will deliver, or cause to be delivered, hereunder to the Vendee the various units of the Equipment at such place or places as may be appropriate. All units of the Equipment shall be delivered hereunder and settled for on or before December 31, 1971, and any units of Equipment not so delivered and settled for shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement, and an appropriate agreement supplemented to this Agreement so excluding such units of Equipment shall be executed and delivered by the Owners and the Vendee. The Owners shall in no event be liable for special or consequential damages for delays in delivery due to any cause.

An inspector or other authorized representative of the Vendee has heretofore inspected the Equipment and has determined, and the Vendee hereby acknowledges, that each unit of the Equipment conforms to the specifications applicable thereto, (hereinafter called the "Specifications") including without limitation all applicable

Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads, and is in good order and condition and the Vendee on the Closing Date (fixed as hereinafter provided) shall accept delivery of such unit and, if so requested by the Owners, shall execute and deliver to the Owners in not less than 6 counterparts an appropriate certificate of acceptance (hereinafter called the "Certificate of Acceptance"). On delivery of each of the units of Equipment hereunder to the Vendee, the Vendee shall assume with respect thereto the responsibility and risk of loss for each such unit of Equipment.

3. PURCHASE PRICE AND PAYMENT. The purchase price of each unit of Equipment is set forth in Schedule A attached hereto.

The Vendee hereby acknowledges itself to be indebted to the Vendor, and hereby promises to pay, in cash or by check to the Vendor, at the office of the Vendee, Albany, New York, or at such bank or trust company in the United States of America as the Vendor shall designate for payment to it, the amount of \$2,000,000 which amount is the aggregate purchase price (hereinafter sometimes called the "Conditional Sale Indebtedness") of all the Equipment, in 20 consecutive substantially equal semiannual installments on the first day of April and October in each year, commencing April 1, 1972. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate per annum equal to $1/2$ of 1% above the rate per

annum charged by Continental Illinois National Bank and Trust Company of Chicago for 90-day unsecured commercial loans made at its banking house in Chicago, Illinois, to borrowers of the highest credit rating (hereinafter sometimes called the "Prime Rate") and changing from time to time simultaneously as such Prime Rate shall change. Such interest shall be payable to the extent accrued on the first day of January, April, July and October in each year commencing January 1, 1972.

The term "Closing Date" with respect to the Equipment shall mean such dates (not in excess of 2) which shall be on or before December 31, 1971 and shall not be more than 3 calendar days following presentation of the invoice for the Equipment and the Certificate or Certificates of Acceptance therefor, as shall be fixed by the Vendee by written notice delivered to the Vendor at least 2 business days prior to the Closing Date designated therein.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and public holidays under the laws of the State of Illinois.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest at the rate per annum equal to $1-1/2\%$ above the Prime Rate from time to time in effect and changing simultaneously as such Prime Rate

shall change, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Vendee in lawful money of the United States of America in Chicago Clearing House funds.

Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or a public holiday under the laws of the State of Illinois, such payment shall be made on the next succeeding business day and such extension of time shall in such case be included in computing interest, if any, in connection with such payment.

4. TAXES. The Vendee agrees that, during the continuance of this Agreement, in addition to all other payments herein provided, it will promptly pay or cause to be paid all Federal, state or local taxes, assessments, charges, fines, penalties or license fees (hereinafter collectively called "taxes"); hereinafter levied or imposed upon, or measured by this Agreement or any assignment hereof, or participation or interest in any assignment hereof, or any sale, use, payment, shipment, delivery or transfer of title of the Equipment under the terms hereof, or upon the Equipment or any of the units thereof (other than income, gross receipts [except gross receipts taxes in the nature of and in lieu of sales taxes] or excess profits taxes imposed upon the Vendor with respect to the amounts received by it

under this Agreement), or upon the interest of the Vendee therein, or upon the Vendor solely by reason of its ownership of the Equipment or any of the units thereof, and will keep at all times all and every part of the Equipment free and clear of all taxes which might in any way affect the title of the Vendor or result in a lien upon the Equipment or any unit thereof; and if any tax shall have been levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor on presentation of an invoice therefor; provided, however, that the Vendee shall be under no obligation to pay any taxes of any kind as long as it is contesting in good faith and by appropriate legal proceedings such taxes, and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. In the event any tax reports are required to be made on the basis of individual units, the Vendee will either make such reports in such manner as to show the ownership of such units by the Vendor or will notify the Vendor of such requirements and will make such reports in such manner as shall be satisfactory to the Vendor.

5. TITLE TO THE EQUIPMENT. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use

thereof by the Vendee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the purchase price of the Equipment, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, title to, and property in, such Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee so to do, will execute a bill or bills of sale transferring its title to such Equipment and property therein to the Vendee or upon its order, free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address specified in Article 24 hereof, and will execute in the same manner and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment. The Vendee hereby waives and releases

any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the vendee.

6. MARKING OF EQUIPMENT. The Vendee will, at the first repainting thereof, cause to be plainly, distinctly, permanently and conspicuously marked by stenciling or otherwise, on each side of each unit of the Equipment in letters not less than one inch in height, the Vendor's name followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. In case any of such marks shall at any time be removed, defaced or destroyed, the Vendee will immediately cause the same to be restored or replaced.

The Vendee will cause each unit of the Equipment to be kept numbered with the indentifying number thereof as set out in Schedule A hereto and will not permit the numbers of any such units to be changed except with the consent of the Vendor and in accordance

with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed in 6 counterparts with the Vendor by the Vendee and filed, registered and recorded in all public offices where this Agreement shall have been filed, registered and recorded.

Except as above provided, the Vendee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may cause the Equipment to be lettered "Delaware and Hudson", "D. & H. R. R." or "D. & H. Ry." or in some other appropriate manner for convenience of identification of the interest of the Vendee therein, or if the Equipment is sublet or used as permitted by Article 12 hereof, the name of such lessee or user may be lettered thereon.

7. REPLACEMENT. In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged from any cause whatsoever or otherwise disposed of (herein called a "Casualty Occurrence") prior to the payment of the full indebtedness in respect of the purchase price of the Equipment, together with interest thereon and all other payments required hereby, the Vendee shall promptly and fully inform the Vendor in regard thereto. At any time or from time to time when the total value, determined as hereinafter provided,

of the units that shall have suffered a Casualty Occurrence shall amount to not less than \$50,000 (excluding any units for which payment has theretofore been made to the Vendor pursuant to this Article 7), the Vendee shall pay to the Vendor, within 60 days thereafter, a sum equal to the total value of such units and the Vendor shall not thereafter have any interest in each of the units with respect to which a payment is so made or in any material salvageable from such units. For all purposes of this Article 7, the value of any unit suffering a Casualty Occurrence shall be the greater of the purchase price of such unit or the cost of acquiring a similar unit at the time of such Casualty Occurrence, less, in either case, depreciation at a rate not in excess of 6% per annum, for the period elapsed since the Closing Date to the date of such Casualty Occurrence. The cost of acquiring a similar unit at the time of such Casualty Occurrence and the applicable rate of depreciation shall be determined by a certificate of the President, the Treasurer, an Assistant Treasurer or the Chief Mechanical Officer of the Vendee filed with the Vendor at the time of the aforesaid payment.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, so long as none of the Events of Default specified in Article 18 hereof shall have occurred and be continuing, as the Vendee may direct in a written instrument filed with the Vendor at the time of such payment, be applied, in whole

or in part, (i) to prepay the Conditional Sale Indebtedness subject to the terms hereinafter referred to or (ii) to or towards the cost of a unit or units of standard-gauge railroad equipment to replace such unit or units suffering a Casualty Occurrence as provided in this Article 7.

In case any such money shall be directed by the Vendee to be applied to prepay the Conditional Sale Indebtedness, it shall be so applied at the time, or as soon thereafter as is practicable, when such money shall amount to not less than \$50,000 and shall be so applied ratably in multiples of \$1,000 to all the installments of the Conditional Sale Indebtedness thereafter falling due (any odd amount being applied to prepayment of the last installment) without premium but with accrued interest at the rates applicable to such installments as provided in Article 3 hereof to the date of such prepayment on the amount prepaid.

If, in case of replacement, the cost of the replacing unit or units exceeds the amount paid by the Vendee to be applied by the Vendor pursuant to clause (ii) of the second paragraph of this Article 7, then the Vendee shall pay the excess of said cost over the amount to be applied by the Vendor as aforesaid. The Vendee will cause all replacing units to be marked and numbered as provided in Article 6 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms

and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Vendee shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements.

Whenever the Vendee shall file with the Vendor, pursuant to the foregoing provisions of this Article 7, a written direction to apply money to or towards the cost of a replacing unit of standard-gauge railroad equipment, the Vendee shall file therewith:

(a) A certificate of the President, the Treasurer, an Assistant Treasurer or Chief Mechanical Officer of the Vendee certifying that such replacing unit is standard-gauge railroad equipment and has been marked and numbered as required by the provisions of this Article 7 and certifying the cost of such replacing unit;

(b) An opinion of counsel for the Vendee that title to such replacing unit is vested in the Vendor free and clear of all liens and encumbrances, and that

such unit has come under and become subject to this Agreement;

(c) A bill of sale in favor of the Vendor, in form and substance satisfactory to the Vendor, covering such replacing unit; and

(d) Unless payment of the cost of such replacing unit is made by the Vendor out of funds paid to it pursuant to the first paragraph of this Article 7, a counterpart of a receipt from the party selling such replacing unit acknowledging the payment by the Vendee of the excess of said cost required by the fourth paragraph of this Article 7 to be paid by the Vendee.

If one of the Events of Default specified in Article 18 hereof shall have occurred and be continuing:

(a) and the indebtedness in respect of the purchase price of the Equipment shall have been declared due and payable in accordance with Article 18, all money paid to the Vendor on account of each unit of Equipment having suffered a Casualty Occurrence or held by the Vendor pursuant to this Article 7 (including any Government Securities, Bank Certificates and Bank Deposits, and interest and earned discount thereon) shall be applied first to the payment of any unpaid accrued

interest on such indebtedness and second to the payment of such indebtedness, or

(b) if such indebtedness shall not have been declared due and payable in accordance with the provisions of Article 18, the Vendor, in its sole discretion, shall be entitled to retain all such money paid to it pursuant to this Article 7 (including any Government Securities, Bank Certificates and Bank Deposits, and interest and earned discount thereon) as additional security for such indebtedness or apply it to the prepayment of such indebtedness in accordance with the provisions of the third paragraph of this Article 7.

8. MAINTENANCE AND REPAIR. The Vendee will at all times maintain the Equipment in good order and repair at its own expense.

9. WARRANTIES. EXCEPT FOR THE OWNERS' OBLIGATIONS UNDER ARTICLES 1 AND 2 OF THIS CONDITIONAL SALE AGREEMENT, THE OWNERS EXPRESSLY MAKE NO WARRANTIES OR REPRESENTATIONS WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, THE FITNESS, QUALITY, WORKMANSHIP OR CONDITION OF THE EQUIPMENT, AND THE OWNERS NEITHER ASSUME NOR AUTHORIZE ANY PERSON TO ASSUME FOR THEM ANY OTHER LIABILITY IN CONNECTION WITH THE ACQUISITION OF THE EQUIPMENT EXCEPT AS AFORESAID AND IN NO EVENT SHALL THE OWNERS BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

10. COMPLIANCE WITH LAWS AND RULES. During the term of this Agreement, the Vendee will comply, and will cause the lessees or users of the Equipment to comply, in all respects, with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Vendee will conform therewith, at its expenses, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

11. REPORTS AND INSPECTIONS. On or before April 1 in each year, commencing with the year 1972, the Vendee will furnish to the Vendor a statement showing as of the preceding December 31 the amount, description and numbers of all units of Equipment that have been worn out, lost, destroyed, irreparably damaged from any cause whatsoever or otherwise disposed of during the preceding calendar year (or, in the case of the first such statement, since the date of this Agreement)

and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request. Together with such statement the Vendee will also furnish to the Vendor a statement signed by an authorized officer of the Vendee stating that in the case of all Equipment repaired during the preceding calendar year, the plates or other markings required by Article 6 hereof have been preserved or replaced. The Vendor or its agents shall have the right, but shall be under no obligation, to inspect the Equipment and the Vendee's records with respect thereto once in every year during the term of this Agreement; and the exercise of this right shall in no way and for no reason result in any prejudice whatever to the Vendor. The Vendee, insofar as it may legally do so, will supply free rail transportation over its line for designated agents of the Vendor for purposes of enabling such agents to reach the point or points where the Equipment is in operation and the Vendee's records with respect thereto are kept, for the purpose of inspection.

12. POSSESSION AND USE. The Vendee, so long as it shall not be in default under this Agreement, shall have absolute right to the possession and control of the Equipment and to the use thereof upon the lines of railroad owned or operated by the Vendee, either alone or jointly with another and whether under lease or otherwise, upon the lines of railroad owned or operated by any railroad company, a majority of the capital stock of which is at the time owned or controlled by

the Vendee, or under common control with the Vendee or over which such company has trackage rights; and, in the event the Equipment shall include freight train cars, they may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Vendor to the Vendee, but only upon and subject to all the terms and conditions of this Agreement.

13. PROHIBITION AGAINST LIENS. The Vendee will pay, or cause to be paid, or otherwise satisfy and discharge any and all sums claimed by any party by, through, under, from or against the Vendee or its successor or assigns (including any lessee or user) which if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title thereto of the Vendor, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

14. INDEMNITIES. The Vendee agrees to indemnify and save harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof by the Vendee during the

period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Equipment.

15. PATENT INDEMNITIES. The Vendee agrees to indemnify, protect and hold the Vendor harmless from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, but excluding internal expenses of the Vendor in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

16. COMPLIANCE WITH MARCH 1, 1971 LOAN AGREEMENT. Unless the Vendor shall otherwise consent in writing, the Vendee agrees to keep and perform each of the covenants contained in Sections 5.3 to 5.14 (except 5.11) inclusive, of the Loan Agreement dated as of March 1, 1971 among the Vendee and certain banks and insurance companies and Morgan Guaranty Trust Company of New York, as Agent, and furnish to the Vendor all information, reports and certificates required by

Sections 5.1 and 5.2 of said Loan Agreement to be furnished to the Banks and insurance companies parties thereto, whether or not any loan is outstanding under such Loan Agreement and whether or not such loan is amended, revised or terminated.

17. ASSIGNMENTS. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An Assignment or transfer to a railroad company or other purchaser (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the lines of railroad of the Vendee, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Vendee hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Vendee of its obligations to the Vendor under Articles 4, 14 and 15 hereof or in respect of the payments specified in Article 3 hereof or any other obligations which, according to its terms and context,

is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to and for the account of the assignee at the address of the assignee specified in the aforesaid notice.

The Vendee recognizes that it is the custom of railroad equipment owners to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by any Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of purchase price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights

hereunder which may be so assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Owners in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Owners or by reason of any indebtedness or liability at any time owing to the Vendee by any prior assignee. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Owners or such prior assignee, as the case may be.

In the event of any such transfer or assignment, or successive transfers or assignments, by the Vendor of title to the Equipment, the Vendee will, at its expense, whenever requested by each transferee or assignee, change or cause the change of the markings, if necessary, to be maintained on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment and the rights of such transferee or assignee thereunto, such markings to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such markings for use on railroad equipment covered by conditional sale agreements.

In the event of any such transfer or assignment, prior to the completion of delivery of the Equipment, the Vendee will, in connection with the settlement for the Equipment, deliver to the assignee or transferee of the Equipment at the time of delivery by the Vendee of notice fixing the Closing Date with respect thereto, 6 counterparts⁶⁶ (except for the Bill of Sale for such Equipment, an original and 5 conformed or reproduction copies of which shall be delivered, and an opinion of counsel for such assignee or transferee) of all documents required by the terms of such transfer or assignment to be delivered to the assignee or transferee in connection with such settlement.

18. DEFAULTS. In the event that any one or more of the following events of default (hereinafter called "Events of Default") shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by it as herein provided within 20 days after payment thereof shall be due hereunder; or

(b) The Vendee shall refuse, or for more than 30 days after the Vendor shall have demanded in writing performance thereof, shall fail to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Vendee, and all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Vendee for any relief, which includes, or might result in, any modification of the obligations of the Vendee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for its property in connection with any such proceedings or otherwise given the same status as obligations

assumed by such a trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an Event of Default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the purchase price of the Equipment payable pursuant to Article 3 hereof, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest thereon shall bear interest from the date of such declaration at the rate per annum equal to 1-1/2% above the Prime Rate then in effect to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated.

The Vendor may at its election waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect, and thereupon

the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

19. REMEDIES. If an Event of Default shall occur, then at any time after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law applicable to the action by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Vendee any sum theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Vendee, and for such purpose may enter upon the Vendee's premises where any of the Equipment may be located and may in connection with such removal use and employ any supplies, services and aids and any available trackage and other facilities or means of the Vendee, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the premises of the Vendee for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Vendee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Vendee. This Agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

Upon the occurrence of an Event of Default, then and at any time thereafter during the continuance of such default the

Vendor may proceed to exercise one or more, or all, of the Vendee's rights and remedies under any lease or contract relating to the use of any of the Equipment, and in such event may collect the rentals and other payments due thereunder.

If an Event of Default shall occur, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all the Vendee's rights in the Equipment will thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment by the Vendee; provided, however, that if the Vendee within 20 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balances of the indebtedness in respect of the aggregate purchase price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due by the Vendee under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Vendee; or the Vendor, with or without retaking possession

thereof, may, at its election, sell the Equipment, or any unit thereof, free from any and all claims of the Vendee, or of any other party claiming by, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Vendee by telegram or registered mail addressed to the Vendee as provided in Article 24 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

Subject to any mandatory requirements of law then in force and applicable thereto, any sale of the Equipment hereunder may be held or conducted at Chicago, Illinois, at such time or times as the Vendor may fix (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places and at such time or times as the Vendor may specify),

in one lot and as an entirety, or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law, provided that the Vendee shall be given written notice of such sale as provided in any such requirements,⁶ but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Vendee as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirement, it shall be subject to the right of the Vendee to purchase or provide a purchaser, for cash, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Vendor may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Vendee therefor (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Vendee hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from

time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and

the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to an agent for more than one party, such agent shall be entitled to exercise all rights of the Vendor hereunder in respect of the Equipment assigned to such agent irrespective of any action or failure to act on the part of the parties for which it may be acting.

20. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any

other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

21. EXTENSION NOT A WAIVER. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's rights thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

22. RECORDING. The Vendee will cause this Agreement and any supplements hereto and assignments hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the

Equipment and its rights under this Agreement or for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Vendee with respect thereto, each satisfactory to the Vendor.

23. PAYMENT OF EXPENSES. The Vendee will pay all reasonable costs, charges and expenses (including the fees and expenses of counsel for the Owners and of counsel for the first assignee of this Agreement), including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of the first assignment of this Agreement or any right, title or interest hereunder by the Vendor, of any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of the indebtedness in respect of the purchase price of the Equipment due hereunder. In addition, the Vendee will pay all reasonable costs, charges and expenses, including fees and expenses of counsel and including stamp and other taxes, if any, of the first assignee of this

Agreement or any right, title or interest hereunder (including the fees and expenses of an agent, if the first assignee is an agent) and of any parties acquiring concurrently with such first assignee interests in such first assignment, incurred in connection with such first assignment, payments made thereunder by such first assignee and other parties, and in connection with the transfer by any party or parties of interests acquired in such first assignment.

24. NOTICE. Any notice hereunder to the Vendee shall be deemed to be properly served if delivered or mailed to the Vendee at The Plaza, Albany, New York 12207, or at such other address as may have been furnished in writing to the Vendor by the Vendee. Any notice hereunder to the Owners shall be deemed to be properly served if delivered or mailed to the Owners at The Plaza, Albany, New York 12207, or at such other address as may have been furnished in writing to the Vendee by the Owners. Any notice hereunder to any assignee of the Vendor or of the Vendee shall be deemed to be properly served if delivered or mailed in 6 counterparts to such assignee at such address as may have been furnished in writing to the Vendee or the Vendor, as the case may be, by such assignee.

25. ARTICLE HEADINGS. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26. MODIFICATIONS. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by the Vendor and the Vendee.

27. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

28. DEFINITIONS. The term the "Vendor" whenever used in this Agreement means, before any assignment of any of their rights hereunder, C. B. Sterzing and J. A. Deans, and the survivor of them, and any successor or successors for the time being to their rights, powers, duties and obligations, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment; and the term the "Owners", whenever used in this Agreement, means, both before

and after any such assignment, C. B. Sterzing and J. A. Deans, and the survivor of them, and any successor or successors for the time being to their rights, powers, duties and obligations.

29. EXECUTION. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of September 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owners have hereunto set their hands and seals, and the Vendee has caused these presents to be executed in its name and its corporate seal to be affixed hereto and attested as of the day, month and year first above written.

Witnessed by:

Gregory H. Taylor

Marion E. Cramer

C. B. Sterzing (SEAL)

J. A. Deans (SEAL)

DELAWARE AND HUDSON RAILWAY COMPANY

[Seal]

Attest:

By J. R. Turley
Senior Vice President

J. A. Deans
Secretary

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

I, a Notary Public in and for the State and County
aforesaid, do hereby certify that on this 26th day of
September, 1971, before me appeared C. B. STERZING and
J. A. DEANS to me known to be the persons described in and
who executed the foregoing instrument, and each of them
acknowledged that he executed the same as his free act and
deed.

Witness my hand and seal this day and year aforesaid.

GEORGE H. KLEINBERGER
Notary Public - State of New York
Qualified in Albany County
Reg. No. 01-2144350
Commission Expires March 30, 1972

(Notarial Seal)


Notary Public

My Commission Expires March 30, 1972

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, a Notary Public in and for the State and County aforesaid, do hereby certify that on the 27th day of September, 1971, before me appeared J. R. Turbyfill and J. A. Deans, to me personally known, whose names as Senior Vice President and Secretary respectively, of Delaware and Hudson Railway Company, a corporation, are signed to the foregoing instrument who being by me informed of the contents of the foregoing instrument and being by me duly sworn, did say and acknowledge before me that they are respectively such officers of such corporation and that the seal affixed to said instrument is the corporate seal of said corporation and was so affixed and said instrument signed by authority of its Board of Directors, and that as such officers and with full authority they executed said instrument voluntarily as the free act and deed of said corporation.

WITNESS my hand and seal this day and year aforesaid.

Edna A. Reilly

Notary Public

EDNA A. REILLY
NOTARY PUBLIC, State of New York
No. 24 SEP230
C. 101, 101, 101, 101, 101
C. 101, 101, 101, 101, 101

My Commission Expires March 30, 1972

SCHEDULE A

Manufacturer	No. of Units	Description of Equipment	Railroad's Numbers	Original cost Per Unit	Depreciated Value Per Unit*	Total Depreciated Value*
Pullman Standard 200 S. Michigan Ave. Chicago, Ill. 60604	33	70-ton 50'6" cushion underframe box cars	26081/26113	\$16,607.76	\$15,601.33	\$ 514,043.88
	136	70-ton 50'6" cushion underframe box cars	29511/29528 29530/29548 29550/29557 29559 29561/29570 29572/29581 29583/29602 29604/29606 29608/29609 29611/29614 29616/29623 29625/29627 29629/29630 29632/29641 29643/29660			
				15,610.87	14,664.85	1,994,419.98
						\$2,509,263.86

* As of September 30, 1971

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT, dated as of September 15, 1971, between C. B. STERZING of Albany, New York and J. A. DEANS of Albany, New York, (hereinafter called the "Owners") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association incorporated under the laws of the United States of America, with its office at 231 South LaSalle Street, Chicago, Illinois 60690 (hereinafter called the "Assignee").

WHEREAS, the Owners and DELAWARE AND HUDSON RAILWAY COMPANY, a corporation organized under the laws of the State of Delaware, with an office at The Plaza, Albany, New York 12207 (hereinafter called the "Vendee"), have entered into a Conditional Sale Agreement to be dated as of September 15, 1971 (hereinafter called the "Conditional Sale Agreement"), covering the sale and delivery, on the conditions therein set forth, by the Owners and the purchase by the Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment, together with any railroad equipment substituted therefor or added thereto as provided in the Conditional Sale Agreement, being hereinafter called the "Equipment");

NOW, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to the Owners, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Owners hereby sell, assign, transfer and set over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Owners in and to the Equipment and each unit thereof when and as severally delivered and accepted under the Conditional Sale Agreement, and as to each such unit, upon payment by the Assignee to the Owners of the amounts required to be paid pursuant to the first paragraph of Section 5 hereof in respect of each such unit;

(b) all the right, title and interest of the Owners in and to the Conditional Sale Agreement (except the right to receive the payment or reimbursement of taxes paid or incurred by the Owners as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing by the Vendee to the Owners under the Conditional

Sale Agreement on account of the Vendee's indebtedness in respect of the purchase price of the Equipment and interest thereon, and in and to any other sums which may be or become due from the Vendee under the Conditional Sale Agreement, except as hereinabove excluded; and

(c) all of the Owners' rights, powers, privileges and remedies under the Conditional Sale Agreement; (without any recourse, however, against the Owners for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement);

provided, however, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or in any way affect or modify, the liability of the Owners to deliver the Equipment in accordance with the Conditional Sale Agreement, or relieve the Vendee from its obligations to the Owners under Articles 14 and 15 (except that the Assignee shall also be entitled to the benefit of Vendee's obligations under Articles 14 and 15) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and

Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Owners to the Vendee in respect of the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Owners. In furtherance of the foregoing assignment and transfer, the Owners hereby authorize and empower the Assignee, in the Assignee's own name or in the name of the Assignee's nominee or in the name of and as attorney, hereby irrevocably constituted, for the Owners, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement but at the expense and liability and for the sole benefit of the Assignee.

2. The Owners covenant and agree that they will deliver the Equipment to the Vendee in accordance with the provisions of the Conditional Sale Agreement (but not prior to the filing and recordation of the Conditional Sale Agreement and this Agreement and Assignment pursuant to Section 20c

of the Interstate Commerce Act); and that, notwithstanding this Agreement and Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Owners. The Owners further covenant and agree that they will warrant (a) to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment they had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, and such liens of others as have been subordinated to the rights of Owners and the Assignee under subordination agreements in form and substance satisfactory to the Owners and Assignee (which liens are hereinafter called "Subordinated Liens"), and (b) to the Assignee that, as of the date of the Bill of Sale referred to in Section 5(a) hereof with respect to each unit of Equipment they had legal title to such unit and good and lawful right to assign and transfer such title to such unit and that title to such unit was free of all claims, liens and encumbrances of any nature except liens subordinated in terms satisfactory to the Assignee to the lien created by the Conditional Sale Agreement and the rights of the Vendee under the Conditional Sale Agreement and the rights of holders of Subordinated Liens; and the Owners further covenant and agree that they will defend the title to such unit against the demands of all persons whomsoever based on claims origi-

nating prior to their delivery of such unit to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

3. The Owners covenant and agree with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of or interest on indebtedness in respect of the purchase price of the Equipment or to enforce any provision of the Conditional Sale Agreement or to recover any other sums due from the Vendee thereunder, the Owners will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Owners of any obligation in respect of the Equipment or the manufacture, construction, delivery, guaranty or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Owners. Any and all such obligations shall be and remain enforceable by the Vendee against and only against the Owners and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or the

rights of the Owners under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Owners will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right, except for any designs specified by the Vendee or articles or materials specified by the Vendee and not manufactured by the Owners.

The Owners agree that any amount payable to the Owners by the Vendee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any of the units of the Equipment.

4. Upon request of the Assignee, its successors and assigns, made to the Owners at any time after receipt by them of payment in full of the aggregate purchase price of all the Equipment, the Owners will execute any and all instruments

which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Owners therein or in the Equipment.

5. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Owners (or to such person or institution as may be designated by the Owners in a written instrument signed by the Owners) by official bank or certified check payable in Chicago Clearing House funds, an amount equal to the purchase price of the Equipment to be paid pursuant to said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 2 business days prior to the Closing Date, the following documents, in form and substance satisfactory to the Assignee and its counsel:

(a) A Bill of Sale from the Owners to the Assignee, dated as of the Closing Date, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Vendee that, at the time of delivery to the Vendee, the Owners had legal title to such units and good and lawful right to

sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of others under Subordinated Liens.

(b) A certificate or certificates signed by an inspector or other authorized representative of the Vendee stating that the units of the Equipment have been delivered to the Vendee in accordance with the Conditional Sale Agreement, have been accepted by him on behalf of the Vendee, are in good order and condition, conform to the specifications applicable thereto and to all applicable Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads;

(c) Duplicate invoice or invoices for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee as to the cor-

rectness of the prices of such units stated therein;

(d) An agreement (the "Subordination Agreement") executed by the Trustee under the First General Mortgage dated May 1, 1963 of the Vendee, subordinating in terms satisfactory to the Assignee the lien on the Equipment created by said First General Mortgage to the lien on the Equipment created by the Conditional Sale Agreement;

(e) To the extent necessary to permit the consummation and performance of the transactions contemplated by the Conditional Sale Agreement and this Agreement and Assignment without breach of said Loan Agreement dated as of March 1, 1971, a waiver of each provision of the Loan Agreement dated as of March 1, 1971 among the Vendee and certain banks and insurance companies and Morgan Guaranty Trust Company of New York, as Agent;

(f) An opinion of counsel for the Vendee, dated as of the Closing Date, stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties

and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Vendee and the execution, delivery and performance thereof are not in conflict with any provision of law or of the charter or by-laws of the Vendee nor in conflict with any agreement binding upon the Vendee of which such counsel has knowledge and said Conditional Sale Agreement is the valid and legally binding obligation of the Vendee in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect, (iii) the Conditional Sale Agreement, this Agreement and Assignment and the Subordination Agreement have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (iv) no consent, approval or authorization of any governmental authority (including, without limitation, the Interstate Commerce Commission)

is necessary for the execution and delivery of the Conditional Sale Agreement, this Agreement and Assignment or for the performance of the respective terms thereof, (v) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (vi) title to the units of the Equipment is validly vested in the Assignee, free of all claims, liens and encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement and rights of holders of Subordinated Liens.

(g) An opinion of counsel for the Owners (who may be the same counsel as counsel for the Vendee), dated as of the Closing Date, stating that (i) the Conditional Sale Agreement has been duly executed and delivered by the Owners and is the valid and legally binding obligation of the Owners in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect, (ii) this Agreement and Assignment has been duly executed and

delivered by the Owners and is the valid and legally binding obligation of the Owners in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect, (iii) the Assignee is vested with all the right, title and interest of the Owners in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment, and (iv) title to the units of the Equipment is validly vested in the Assignee, and such units, at the time of delivery thereof to the Vendee, were free of all claims, liens and encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement and rights of holders of Subordinated Liens.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any of the Equipment not settled for on or before December 31, 1971, and all such Equipment shall be excluded from the Conditional Sale Agreement and not included in the term "Equipment" as used in the Conditional Sale Agreement and in this Agreement and Assignment, and the Owners and the Vendee (and the Assignee

at the request of the Owners or the Vendee) shall join in the execution of a supplemental agreement limiting the Conditional Sale Agreement to the Equipment settled for on or before the aforesaid date.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an Event of Default (as defined in the Conditional Sale Agreement), or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and public holidays under the Laws of the State of Illinois.

6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder, and may grant participations to others with respect to its interests hereunder. In the event of any such assignment or participation, any such subsequent or successive assignee or assignees or participant or participants shall, to the extent of such assignment or participation,

enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

7. The Owners hereby:

(a) Represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly and lawfully executed and delivered by the Owners for a valid consideration and has not been amended, that the Owners have no reason to believe that the Conditional Sale Agreement is not a valid existing agreement, binding upon the Owners and the Vendee in accordance with its terms, and that, assuming valid authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, insofar as the Owners are concerned, a valid and existing agreement binding upon the Owners and the Vendee in accordance with its terms; and

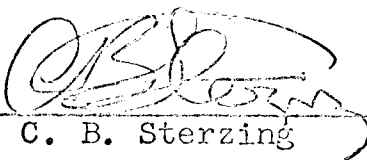
(b) Covenant and agree that they will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the

premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

8. This Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement and Assignment may not be amended or terminated, except by a written instrument signed by the Owners and the Assignee.


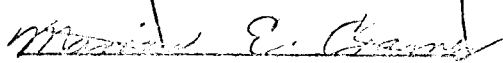
9. This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee. Although this Agreement and Assignment is dated for convenience as September 15, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owners have hereunto set their hands and seals, and the Assignee has caused this instrument to be executed by its duly authorized officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.



C. B. Sterzing (SEAL)

Witnessed by:

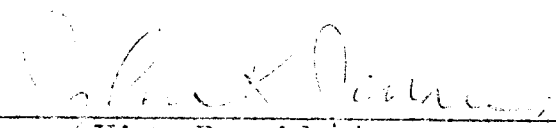



Marshall E. Deans



J. A. Deans (SEAL)


CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

By 

Vice President

(Seal)

Attest:



Commercial Banking Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Delaware and Hudson Railway Company hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment, dated as of September 15, 1971.

DELAWARE AND HUDSON RAILWAY COMPANY

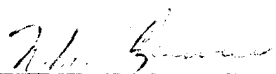
By J. R. Thierley
Vice-President

Dated: September 29, 1971

STATE OF ILLINOIS)
)
COUNTY OF C O O K) ss.:.

I, a Notary Public in and for the State and County aforesaid, do hereby certify that on this 28th day of September, 1971, before me appeared John K. Jensen and Anthony J. Turek to me personally known, whose names as Vice President and Commercial Banking Officer, respectively, of the Continental Illinois National Bank and Trust Company of Chicago, a national banking association, are signed to the foregoing instrument, who being by me informed of the contents of the foregoing instrument and being by me duly sworn, did say and acknowledge before me that they are respectively such officers of such corporation and that the seal affixed to said instrument is the corporate seal of said corporation and was so affixed and said instrument signed by authority of its Board of Directors, and that as such officers and with full authority they executed said instrument voluntarily as the free act and deed of said corporation.

Witness my hand and seal this day and year aforesaid.



Notary Public

231 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603

My Commission Expires

(Notarial Seal)

MY COMMISSION EXPIRES APR. 15, 1974

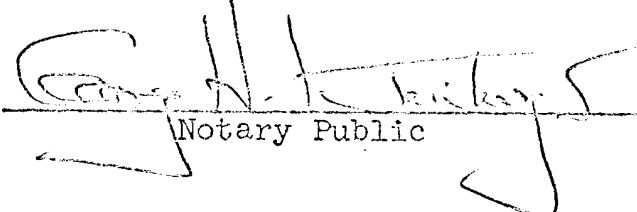
STATE OF NEW YORK)

COUNTY OF ALBANY)

ss.: .

I, a Notary Public in and for the State and County
aforesaid, do hereby certify that on this 26th day of
Sept^r, 1971, before me appeared C. B. Sterzing and J. A.
Deans to me known to be the persons described in and who
executed the foregoing instrument, and each of them ac-
knowledged that he executed the same as his free act and
deed.

Witness my hand and seal this day and year aforesaid.


Notary Public

GEORGE H. KLEINBERG
Notary Public - State of New York
Qualified in Albany County
Reg. No. 01-2144350
Commission Expires March 30, 1972

(Notarial Seal)

My Commission Expires

C E R T I F I C A T E

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

I, Mary R. Kulikowski, a Notary Public
in and for the State and County aforesaid do hereby certify
that I have compared the attached document(s) with the ori-
ginal document(s) and that the attached is a true and correct
copy of the original in all respects.

WITNESSETH my hand and seal this 29th day of
September, 1971.

Mary R. Kulikowski
NOTARY PUBLIC

My commission expires Sept. 29, 1972